IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.2065 of 1988

Vitthal Bandu Randive & anr. Petitioners
Vs.
Govind Pandharinath Kshirsagar,
since deceased by his heirs and LRs:
Saraswati Govind Kshirsagar & ors. Respondents

Mr.M.R.Deshpande for petitioners.
Mr.P.M.Shah for Resp.Nos. 2A to 2E

CORAM: B.H.MARLAPALLE,J.

June 12, 2006.

ORAL JUDGMENT:

1. This petition arises from the proceedings instituted under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act" for short). The undisputed facts are that the present respondent nos.1 and 2 were the owners of the agricultural land admeasuring 9 Hectares and 74 Ares located in Gat No.148 of village Degaon, Taluka Pandharpur, Dist. Solapur. By an agreement dated 17/4/1942 (rent note) the land was leased to one Shri Narayan Piraji Uplap who had proposed to establish a sugar factory and the land was specifically given on lease for the cultivation of sugarcane and for growing fruit trees. Subsequently the said tenant Shri Narayan Piraji Uplap formed a company by name "Shivaji Sugar Mills" and, therefore, the suit land

stood leased to the said company as per the conditions in the rent note. Subsequently the said company sublet the land to one Shri Krishna Nana Lambkone who cultivated the land but on his death his daughter Smt.Rakmabai Babdu Randive started cultivating the land. Shivaji Sugar Mills went in liquidation and the District Court at Pune appointed Govind Piraji Uplap as the receiver and this Govind was the brother of Narayan Uplap, the original tenant and the owner of the sugar mill. At the same time Shri D.V.Mengale and A.D.Gurlhosur were also appointed as official liquidators of the property of the said sugar mills.

2. The landlords submitted an application under Sections 14, 25 and 29 of the Act to the Tahsildar at Pandharpur and the said application came to be registered as Tenancy Case No.10 of 1973. Notices were issued to all the parties and after hearing them the Tahsildar framed the following issues:

(1) Whether the applicants are landlords and whether opponents are the tenants.

(2) Whether provisions of section 43A of the B.T. & A.L. Act are applicable to the lands under dispute.

(3) Whether there are defaults in payment of rent. If so for what years.

(4) Whether the landlord has served valid notices on the tenants.

(5) Whether the tenancy is terminated by the landlord.

(6) Whether the tenant is entitled to relief mentioned in Section 25(1) of the B.T. & A.L. Act, 1948.

(7) Whether the provisions of Section 88 of the B.T. & A.L. Act are applicable to the lands under dispute.

(8) Whether the application is tenable.

All the issues except Issue No.6, were answered in the affirmative and Issue No.6 was answered in the negative i.e. the tenant was not entitled to relief mentioned in Section 25(1) of the Act. So far as Issue No.3 is concerned, the Tahsildar noted that there were defauls in payment of rent in the years 1961-62 to 1969-70. The preliminary objection for the maintainability of the application was rejected and the Tahsildar recorded a finding that the prvoisions of Section 43-A of the Act were applicable to the suit land. It was for these reasons that the Tahsildar was pleased to allow the Tenancy Case No.10 of 1973 by his judgment and order dated 30/12/1976 and this order came to be challenged in Tenancy

Appeal No.28 of 1977 before the Asst. Collector. The said appeal was allowed by the Asst. Collector by order dated 27/8/1985 and the order passed by the Tahsildar on 30/12/1976 came to be set aside. Consequently the possession of the suit land was directed to be retained with the appellants i.e. Smt.Rakhumabai Bandu Randive through her constituted attorney Shri Narayan Bandu Randive and Shri Vitthal Bandu Randive. Smt.Rakhumabai was impleaded as Opponent no.3 in Tenancy Case No.10 of 1973 and it is not known how her son became appellant no.2 in Tenancy Appeal No.28 of 1977. Be that as it may the landlords challenged the order of the Asst. Collector allowing the appeal in Revision Application No.379 of 1985 before the Maharashtra Revenue Tribunal at Pune. The learned Member of the Tribunal was pleased to allow the Revision Application vide his judgment and order dated 17/2/1988 and the order passed by the Tahsildar on 30/12/1976 came to be confirmed. The said order of the Tribunal is under challenge in this petition under Article 227 of the Constitution.

3. It must be noted at this stage itself that this petition has been dismissed against the

landlords as per the order dated 7/6/2004 and the name of respondent no.3 i.e. the official liquidator was also deleted along with the name of respondent no.4. On the demise of Narayan Uplap, his son Nanasaheb Narayan Uplap was brought on record by filing Civil Application No.4780 of 1989 and the petition has been dismissed against Narayan as well as per the order passed by this Court on 7/6/2004. Thus as at present the petition survives against Arvind Narayan Uplap and Nandkumar Narayan Uplap. Even if it is presumed that they represent the original tenant Narayan Piraji Uplap, as noted earlier, the land was leased to him for sugarcane cultivation and for growing fruit trees in the year 1943 and it was with the condition that on formation of the sugar mill the lease would stand transferred to the said sugar mill.

4. Even as per the contentions of the petitioners they had come in possession of the land through original sub-tenant i.e. Krishna Nana Lambkone, who was given the land on sublease by the sugar company. It is thus clear that the original landlors had not created any tenancy in favour of the present petitioners or for that matter in favour of Shri

Krishna Nana Lambkone and the tenancy was either in favour of Narayan Uplap or the sugar mill established by him. The sugar mill had agreed to pay an amount of Rs.84 Aana 4 and paise 3 per year by way of rent. It has come on record that the sugar factory had sublet the land to Krishna Nana Lambkone on yearly rental of Rs.160/-. There was a dispute between the sguar mill represented through its receiver/liquidator on the one hand and the sub-tenant on the other hand. The LRs of the subtenant submitted some receipt before the Civil Court for the years 1970-71 in support of their contentions that the agreed compensation was paid in respect of the suit land. This contention was accepted by the lower Appellate Authority i.e. Asst. Collector setting aside the view taken by the Tahsildar to the contra and the Revenue Tribunal has disagreed with the view taken by the Asst. Collector and confirmed the findings recorded by the Tahsildar.

5. The learned counsel for the petitioners submitted that the findings recorded by the Asst.Collector were based on record viz. the rent receipts were available and submitted in the Civil Court and these receipts discharged the burden of the

petitioenrs to pay the annual rent and, therefore, there was no reason for the Revenue Tribunal to upset the findings recorded by the Asst.Collector. These submissions are fallacious. The Tahsildar recorded a finding that for the year 1960-61 to 1969-70 the landlords had not received the renatal payment in respect of the suit land and the receipts relied upon by the learned counsel for the petitioners do indicate that some payments were made to the sugar mill or the court receiver by depositing the amount in the Civil Court for the year 1970 and 1971. These receipts do not show that the payments were made to the landlords. It is not the case of the petitioenrs that when sublease was created in favour of Shri Krishna Nana Lambkone by the sugar mill the landlords were a consenting party and in fact there is no written document for such a sublease. The Revenue Tribunal was, therefore, right in holding that the Asst. Collector's finding regarding payment of annual rent to the landlords had no documentary support is required to be upheld. The Tahsildar being the fact finding Court had verified all the findings and recorded a finding that the landlords had not been offered and they had in fact not received the annual rental compensation in respect of

the suit lands. The deposits made by the petitioners of some amounts before the Civil Court do not discharge the burden of payment to the landlords of the agreed rental compensation.

6. In the premies the challenge to the order passed by the Maharashtra Revenue Tribunal and impugned herein is devoid of merits and hence the petition fails. The same is hereby dismissed. Rule discharged. Oral application for stay to the order is hereby dismissed.

(B.H.MARLAPALLE,J.)